



# TOWN OF HUDSON

## Zoning Board of Adjustment



Maryellen Davis, Chairman

Thaddeus Luszey, Selectmen Liaison

12 School Street · Hudson, New Hampshire 03051 · Tel: (603) 886-6008 · Fax: (603)594-1142

### HUDSON ZONING BOARD OF ADJUSTMENT MEETING MINUTES December 8, 2016

#### I. CALL TO ORDER

Chairman Davis called this meeting of the Hudson Zoning Board of Adjustment to order at 7:30 PM on Thursday, December 8, 2016, in the Paul Buxton Meeting Room in the Town Hall basement. Chairman Davis then requested Mr. Houle to call the roll. Representatives of the Hudson Zoning Board of Adjustment were as follows:

**Members Present:** Maryellen Davis, Donna Shuman, Charles Brackett, Normand Martin, Jim Pacocha

**Alternates Present:** Kevin Houle

**Staff Present:** Bruce Buttrick, Zoning Administrator

**Selectmen Liaison** Ted Luszey

**Excused:** Alternate Gerald Dearborn

*Chairman Davis commented that this is the first meeting in six years of service that Mr. Dearborn has missed. She also stated that Mr. Dearborn has not signed up to renew his term on the Board. It is her hope that if you see Mr. Dearborn about town that you will give him your best wishes and thank him for his service to the Town of Hudson. Mr. Dearborn has given countless hours to the Zoning Board of Adjustment and worked diligently as an Alternate. He also stepped up as a Member when asked. She extended her appreciation to him on behalf of the ZBA.*  
Alternate Maurice Nolin

**Recorder:** Mary-Ellen Marcouillier

#### II. SEATING OF ALTERNATES AND ANNOUNCEMENTS

For the benefit of all attendees Chairman Davis noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment were available at the door of the meeting room. She noted the outline includes the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable.

The curfew for the meeting is 11 PM. Chairman Davis does not anticipate this to be a problem for this session. In the event that a case is not heard by 11 PM, it will be postponed until the next meeting. If a case is in process, it will be heard until midnight then continued at the next meeting.

### III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD

**1. Case 168-121 (12-8-16): H & B Berggren, LLC/Steve Trefethen, 4 Mulberry Street, Windham, NH, requests a Variance at 238 Central Street, Hudson, NH, to change an existing nonconforming use that consists of commercial use and two apartments, to a nonconforming multi-family use with a total of six apartments. [Map 168, Lot 121, Zoned R-2; HZO Article VIII §334-30, Changes to or Discontinuance of Nonconforming Uses.]**

Steve Trefethen testified that on June 19, 2014 the ZBA Board granted a variance to permit a conversion of existing space to two apartments with more than 750 sq. ft. per apartment and the continued business use on the second floor. The total area for the apartments was to be a minimum of 750 sq. ft. with conversion of storage space into another room. He is here today requesting a variance to change an existing nonconforming use that consists of commercial use and two apartments, to a nonconforming multi-family use with a total of six apartments. Granting the requested variance will not be contrary to the public interest because the property is zoned residential and was previously residential, now allowed office by way of a variance. The proposed use will observe the spirit of the ordinance, because the area is mostly residential with a Church and is zoned R2. Substantial justice would be done to the property owner by granting the variance, because the use as offices has diminished substantially in the last 2 years and not 1 space has been rented. Advertising in the local newspaper and in the RE MLS has not produced any results in 2 years. The building is mostly vacant. The proposed use will not diminish the values of surrounding properties, because the building as residential property will be converted to its original use in a residential zone. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because the property is mostly empty office space as the only use allowed by variance. It would not be suitable or is not zoned for retail or warehouse. With the 2<sup>nd</sup> and 3<sup>rd</sup> floor mostly empty, it has created a hardship on his wife and himself paying taxes, insurance, utilities and other bills sustained on that property. Mr. Trefethen also stated that there will be sprinklers throughout the building and that plumbing is in the plan. Only four walls would be removed and flooring was all done. There will be plenty of water, plenty of parking, and no foreseeable issues with traffic.

Chairman Davis asked if anyone in the audience wished to speak in favor of the application and no one came forward. Chairman Davis then asked if anyone in the audience wished to speak neutrally or in opposition of the application. Norman Boyer came forward.

Mr. Boyer testified that he believed Mr. Trefethen created his own problem by putting in two apartments. The dumpster in the spring through fall months has been an issue due to the waste from the tenants; maggots have been found in the dumpster and the odor has also been intolerable. Mr. Boyer called the dumpster company and complained, he was told that they could not do anything unless Mr. Trefethen requested a pick up. Even though Mr. Trefethen does keep the property in good working condition he is opposed to allowing any more apartments in that area. Mr. Boyer believes strongly that the lot in question should go back to commercial and be cleaned up for professional personnel to rent. He also noted that there is almost no green space and families renting would not have any place for children to play or be able to have any recreational area outdoors.

Chairman Davis asked if anyone else in the audience wished to speak neutrally or in opposition of the application. No one came forward.

Mr. Trefethen responded to Mr. Boyer's concerns. He testified that Mr. Boyer has never been in his building. He also testified that he questioned his tenants about the dumpster and was told that Mr. Boyer's tenants are using his dumpster for their garbage on a daily basis.

Chairman Davis asked if there were any questions, comments or concerns from the Board.

Mr. Boyer asked if he could comment on Mr. Trefethen's remarks about his tenants using Mr. Trefethen's dumpster. He responded that he had no idea his tenants were using the dumpster and that Mr. Trefethen should call Hudson P.D. and have them address the situation.

Mr. Brackett had concerns about the paper work that was presented in their packets. He did not feel that he could make a decision based on that paper work. Mr. Buttrick stated that Mr. Trefethen supplied the necessary paper work for his case. Mr. Brackett believes that the documentation of historical items that took place on the property itself are missing and he cannot make a decision without that information. The Town records should have been part of the Board's packet. Mr. Brackett asked about the sign that was posting 10 businesses. Mr. Trefethen replied that it was an old sign and there were only 2 businesses. Mr. Trefethen testified that there would not be any offices, there will only be 6 apartments. Mr. Brackett was having difficulty understanding the floor plan that was presented as there were a lot of areas that were not labeled properly. Although the floor plan needs to go before the Planning Board, approving the proposed Variance with the mislabeled plan might give the other Boards the wrong perception of what the ZBA actually approved. Without knowing the history of the building, some of the Board members were inclined to defer.

Selectman Luszey asked to be heard. He was concerned that the Board members were asking questions that were outside the bounds of what the ZBA was formed to do. When looking at RSA 674:33, there are 5 very distinct items that the ZBA has power for. Members should be looking at the case in front of them; based on the facts they have in front of them, and go forward. It is an existing property with an existing set of things going on in it and they should make the decision of granting the Variance or not based on those things. Members should not be burdening themselves with what happened in the past. Mr. Brackett disagreed; Ms. Davis stated that they were being asked if the Variance before them was a reasonable request for the zone that it is in. Ms. Davis continued that the Board was trying to establish that if a six multi-family unit is a reasonable request for an R2 area and if they need more information on how that is going to be configured, what it is going to look like with the parking, then that information should be provided. Even though it is a Planning Board issue it still impacts the area. Mr. Brackett stated that the problem was that they have a presently non-conforming use converted from a previous non-conforming use and on the face of it, it is not a reasonable request. They need to look back a little deeper to see if there was a Variance before and what the use was at that time so they can determine if that helps support a logical extension of what it should be in the future. None of that information is in the packet before them and should be. Selectman Luszey stated that he was looking at the power of what the ZBA is and believed that they were stepping out of bounds and wanted them to be drawn back in to what they should be focused on as a Board.

Mr. Martin asked if the Chair could have Mr. Trefethen explain the hardship. Mr. Martin believes that the applicant currently has reasonable use of the property and he cannot make a decision regarding the proposed Variance solely based on the applicant's financial situation.

Mr. Trefethen testified that he was trying to utilize the building the best way he could. It is not conducive as office space and he believes converting to apartments would not only benefit him, but the Town of Hudson as well. Hudson needs apartments to accommodate the present workforce. He also stated that economics is an issue as the building is currently empty and he is still paying bills to sustain the property. Chairman Davis stated that one of the things for the hardship criteria in order to grant the requested Variance is that the applicant needed to tell the Board what was unique about the land/property and not the building itself or the monetary issues. Mr. Trefethen testified that the location and set-up of the land would be best utilized with converting the existing building into six apartments.

Chairman Davis declared the matter before the Board.

Mr. Martin maintained that the applicant has reasonable use of the property and that the criteria for hardship has not been met. His decision will be to deny.

Mr. Pacocha would like to see the applicant put forth a new application showing the history on the property. He made a motion to defer. No one seconded the motion – motion failed.

Mr. Martin made a motion to deny, seconded by Mr. Brackett.

Chairman Davis asked the Clerk to call the roll.

Normand Martin	Deny
Charles Brackett	Deny
Jim Pacocha	Deny
Donna Shuman	Deny
Maryellen Davis	Deny

Vote: 5-0                      Deny Variance for Case 168-121

**2. Case 182-050 (12-8-16): Peter DeSalvo, 43 Lowell Road Unit 202-12, Hudson, NH, requests a Variance to retrofit the existing commercial warehouse located at 15 Central Street, Hudson, NH, to serve as the new headquarters for Peter DeSalvo Contracting, LLC. [Map 182, Lot 050, Zoned TR; HZO Article VIII §334-30, Changes to or Discontinuance of Nonconforming Uses.]**

Patrick Colburn, Project Manager, Keach-Nordstrom Associates, Inc. testified on behalf of Peter DeSalvo that the applicant desires to retrofit the existing commercial warehouse to serve as the new headquarters for Peter DeSalvo Contracting, LLC. Plans include creating storage space in the basement level, with at grade access from the lower lot facing the Merrimack River, a sheet metal bending shop on the first floor, with at grade access from the upper level driveway, and office/storage space on the second and third levels all in support of his existing construction firm. There are no plans to expand the size of the existing structure. However, exterior improvements may include a parking area for his staff in the southern portion of the property behind Lot 49. This project presents an opportunity to improve a dilapidated structure within the Town’s TR Zone. The spirit of the ordinance is to promote “efficiency and economy in the process of development by encouraging the most appropriate use of land throughout the Town.” Substantial justice is done by allowing the applicant reasonable use of the residentially zoned commercial property. The building

exists, and given its multiple levels of at-grade overhead door access is perfectly suited for the intended use. The exterior improvements being contemplated will only serve to enhance the aesthetic of the existing site. Greater benefit is gained by the applicant than any adverse impact to be borne by abutters as a result of granting the requested Variance. The applicant asserts that proposed renovations at the subject site both inside and outside, to retrofit a run-down warehouse structure in order to serve an established Hudson businessman and his firm will increase the value of surrounding properties, both commercial and residential. Unnecessary hardship is borne by the current property owner, who is stuck with a commercial building and commercial property that is unable to be used for most commercial purposes. This particular property is very unique, because it and the abutting commercial uses to the north rely so heavily on each other, respectively. Access to both properties is over Lot 50. Parking adjacent to the automotive repair building on Lot 4 is just 5 feet from the common property boundary. Uses on Lots 4 and 51 cannot continue operations without that shared access agreement in place with Lot 50. This unique circumstance makes commercial use of Lot 50 the only use that makes sense, irrespective of the underlying zoning district. Transforming the outdated and underutilized space into the home of Peter DeSalvo Contracting, LLC is a reasonable use of the land.

Chairman Davis asked if anyone in the audience wished to speak in favor of the application, no one came forward. Chairman Davis then asked if anyone in the audience wished to speak neutrally or in opposition of the application. No one came forward.

Chairman Davis asked the Board Members if they had any comments, concerns, or questions.

Mr. Pacocha asked if the property would be used solely by DeSalvo Contracting, LLC. Mr. Colburn replied that DeSalvo Contracting had no interest in leasing any space and would be the sole occupant of the property.

Mr. Brackett asked about the easement access. Mr. Colburn replied that it was 12 feet in width and had shared agreement with all property owners.

Mr. Martin commented that it was a great use of the property and he made a motion to grant, seconded by Mr. Pacocha.

Chairman Davis asked the Clerk to call the roll.

Normand Martin	Grant
Jim Pacocha	Grant
Charles Brackett	Grant
Donna Shuman	Grant
Maryellen Davis	Grant with Comment

Chairman Davis agrees that it is a reasonable use of the property and the hardship criteria was met. She also stated that Mr. DeSalvo did a rehab on a house on Dracut Road; he took a dilapidated property and converted it into something nice. Mr. DeSalvo does nice work and if he follows suit with this project, it will increase the value of the neighboring properties.

Vote: 5-0                      Grant Variance for Case 182-050

**3. Case 174-079 (12-8-16): Andrew H. Sullivan, ESQ, Agent, 24 Eastman Avenue, Bedford, NH, requests a Variance to allow the frontage of the proposed two-lot subdivision at 25 Derry Street, Hudson, NH, to have 90 feet of frontage on the existing Lot 79, and 78 feet of frontage on the proposed Lot 79-2, where a minimum of 90 feet is required. [Map 174, Lot 079, Zoned TR; HZO Article VII §334-27, Table of Minimum Dimensional Requirements.]**

Chairman Davis read a letter in opposition from Joanne Briand of 21 Derry Street, Hudson, NH for the records.

Andrew Sullivan testified that the owner wishes to subdivide subject lot into two residential lots, both fronting Derry Street. Proposed Lot 174/79-2 will have 10,496 sq. ft. and 90 feet of frontage on Derry Street. Subject lot is located in an area of small and large lots with varying shapes, dimensions and frontages, many with much less than 78 feet of frontage and much less than 10,000 square feet of area. Applicant's proposal is consistent with the neighborhood and is an allowed use in the TR Zone and, consequently, will not alter the essential character of the neighborhood. For the same reasons, granting this variance will not be contrary to the spirit of the ordinance or the public interest. Proposal will promote and facilitate a use that characterizes the neighborhood, and add to the tax base; it will provide a gain to the general public without causing loss to the Applicant or any other lot owner in the area. Proposed new Lot 174/79 is a part of an existing 84,500 square foot lot with 168 feet of frontage in a zone which allows single family residential lots with 90 feet of frontage and 10,000 sq. ft. of area, but the frontage cannot be increased. That frontage limitation creates an intrinsic hardship unique to this lot in the neighborhood where virtually every other lot is developed but much smaller in size and area.

Chairman Davis asked if anyone in the audience wished to speak in favor of the application and no one came forward. Chairman Davis then asked if anyone in the audience wished to speak neutrally or in opposition of the application. Bruce Briand came forward.

Bruce stated that traffic has increased tremendously over the past two decades on Derry Street and that there are safety concerns with adding a driveway onto an already congested and heavily trafficked street. There is also concern based on the impacts the proposed subdivision will have on the wetlands that run between the Briand's property and the subject proposal. The Briand's have maintained the wetland drainage that runs between the properties and to the culvert/drainage that runs under Derry Street. Future development will most likely create serious issues with the drainage.

Attorney Sullivan commented that the drainage is all on the site. The water run-off will be handled at the Planning Board. He also stated that there is no wetland on the Applicant's site at all. The lot is big enough to handle any concerns. Everyone is concerned about safety, however development does take place and it is a residential area. One more house will not unduly exasperate any safety concerns on that street.

Chairman Davis asked Attorney Sullivan to again address the hardship criteria. There is Case Law that states just because the lot is large, that in itself does not constitute a hardship.

Attorney Sullivan testified that it is the biggest lot that can't be utilized. The lot cannot be used in a reasonable manner.

Chairman Davis commented that it is a self-created hardship. It is being used in a reasonable way today and what you want to do is take a conforming lot that happens to be big and make it a non-conforming lot

because it does not have the proper frontage. She is struggling with that and does not understand how it can be reasonable, especially with negative abutter testimony.

Attorney Sullivan stated that he cannot create an additional dimension to make it fit by the zoning. The lot is so big that it would be unreasonable not to utilize it and it can't be utilized without the requested frontage.

Mr. Martin commented that there is reasonable use for the lot today and the requested Variance does not meet the hardship criteria. There is also the safety concern with Derry Street being so busy. Adding another driveway to a busy street should not happen.

Mr. Briand commented further that the applicant brought this situation on by selling the property at the tip of Haverhill Street.

Attorney Sullivan testified that safety would not be impacted on such a busy street.

Chairman Davis declared the matter before the Board.

Mr. Martin made a motion to deny, seconded by Ms. Shuman.

Chairman Davis asked the Clerk to call the roll.

Normand Martin	Deny
Donna Shuman	Deny
Charles Brackett	Deny
Jim Pacocha	Grant
Maryellen Davis	Deny

Vote: 4-1                      Deny Variance for Case 174-079

#### **IV.     REQUEST FOR REHEARING – CASE 254-041**

Mr. Martin made a motion requesting that the rehearing be deferred to January's meeting due to the fact that the request was submitted so late and did not allow time for review. Mr. Brackett seconded the motion.

Chairman Davis asked the Clerk to call the roll.

Normand Martin	Defer to January
Charles Brackett	Defer to January
Donna Shuman	Defer to January
Jim Pacocha	Defer to January
Maryellen Davis	Defer to January

Vote: 5-0                      Defer Rehearing of Case 254-041 to January meeting

*Chairman Davis declared a 10 minute break at 9:45 PM*  
*Chairman Davis declared the ZBA Meeting back in session at 9:55 PM*

## V. REVIEW ZBA CONCERNS

Chairman Davis welcomed Fire Chief Robert M. Buxton and Deputy Chief John O'Brien to the meeting.

Chairman Davis stated that she and members of the ZBA had concerns that they wished to bring forth to the Fire Chief, Deputy Chief and ZBA Selectmen Liaison. They were under the impression that they would be meeting in January. ZBA Board Members were notified that they would be meeting in December due to the fact that Chief Buxton wanted to bring their concerns to the Selectmen Meeting on December 13<sup>th</sup>. This change in venue left the ZBA Board Members with little time to gather their concerns. It was unclear as to why the meeting was being rushed. However, Chairman Davis did state that she sent an email to Mr. Buttrick and wanted to read it into the record

*I want you (Mr. Buttrick) and everyone else on copy (Chief Buxton, Deputy Chief O'Brien and Selectman Luszey) to know that I am not submitting anymore Code Enforcement Complaint Forms for the following reasons: (1) Chief Buxton previously told me that I did not need to fill out forms, that I could speak directly to you for any actions, issues, concerns that I might have. (2) My submissions could be construed as reason for bias should any of the properties come before Zoning for relief thus requiring me to recuse myself for that hearing. (3) My prior submissions have not been acted upon or answered sufficiently or correctly; only ordinances cited that seem to be vague, and convoluted with no follow-up. (4) It is evident to me, members of the ZBA and many residents in town that Community Development is not interested in upholding the Zoning Board Ordinances that were enacted by the voters of the Town of Hudson with the expectations that they would be adhered to. (5) There is little if any follow-up being done on validating that once a request is granted with stipulations; those stipulations are upheld and conversely once a request is denied that the activity ceases. All ZBA members take their roles very seriously, as it should be, given that we are a Judicial Board. It is disheartening, infuriating and self-defeating to know that Zoning determinations, Administrative and Code Enforcement work is cherry picked and responded to in such a lack luster fashion which is vague, lacking clear detail and inconsistent. I believe there are other avenues to use to try and get matters resolved so I will pursue that route. Regards, Maryellen.*

Chairman Davis stated that it was that email that precipitated this meeting. She had prepared a discussion topic in the form of an agenda and asked Chief Buxton if he had his own agenda. Chief Buxton asked if he could comment on the email.

Chief Buxton commented that Selectmen Luszey notified him that the Selectmen were meeting on December 13<sup>th</sup> and that they wanted to hear the ZBA Board Members concerns. The Chief was asked to gather the information and present it at the meeting on the 13<sup>th</sup>. He was aware that the ZBA Board was meeting on December 8<sup>th</sup> and therefore asked to be put on the agenda for the meeting. He was under the impression that tonight's meeting would be an informational session and that there would be a follow-up meeting in January.

Chairman Davis stated that she was not aware that the Chief and Deputy Chief would be requesting to be placed on the December 8<sup>th</sup> Meeting Agenda, as Chair of the Board, she would have like to have been notified of that decision.

Selectmen Luszey commented that they followed the proper channel to be placed on tonight's agenda. Selectmen Luszey further commented that he feels the sense of urgency because of the numerous conversations he has had with Chair Davis regarding Administration and Code Enforcement. He is particularly concerned with the statement made by Chair Davis that Members of the ZBA and many

residents in town believe that Community Development is not interested in upholding the Zoning Board Ordinances. He believes his department is doing an extremely good job enforcing the ordinances made by the Boards. It is quite discerning for him to hear that Code Enforcement are cherry picking the work.

Chairman Davis commented that the comment of cherry picking was made to her by Mr. Buttrick.

Selectman Luszey stated that cherry picking is a serious issue and they should not be cherry picking anything. He believes that there is a tone in Chairman Davis' email that should be addressed. It is the Board of Selectmen's responsibility to ensure that each Board is operating effectively, efficiently and within the context according to the responsibility that empowers.

Chairman Davis commented that she does believe that the ZBA Board operates fairly, effectively and quite well. She does not believe they get the support they need on the back end, on whether the case comes to the Board complete, accurate and noticed well; and when a decision is made with stipulations if the stipulations are upheld. There is also concern that when a decision is denied as to whether or not the activity doesn't start or ceases.

Selectmen Luszey is ready to discuss each issue raised. The ZBA is clearly articulated in RSA's and in Town policies and procedures / By-Laws. The ZBA is here to uphold the zoning ordinances of the Town.

Mr. Brackett commented that from what has been said so far, he is hearing that Selectmen Luszey does not believe that the ZBA has been conducting themselves accordingly and that they should have a more narrow view of their responsibilities.

Selectmen Luszey replied that the ZBA should stay within the context of what the RSA's authorize you to look at. The Chief generates reports on how many cases were looked at, how many Code Enforcements were done and how many closes took place. When Selectmen Luszey looks at the ZBA By-Laws, he doesn't understand why ZBA Members do not know that same information. There are duties outlined in the By-Laws that certain Members should be following-up on and releasing that information to the full Board.

Chairman Davis stated that there is disconnects here; the Board is missing information that they don't see. When she drives through the Town, she sees things and has no way of knowing (a) if anyone is doing anything about it; (b) if it has been allowed. Unless she comes into town and asks the questions or looks on line at the data base.

Chief Buxton asked if he could offer some information pertinent to the discussion so far. When the Code Enforcement and Zoning piece was placed at the Fire Department, it was his responsibility to add structure and consistency and bring it to the forefront. The job of the Zoning Administrator is a split position, that person is responsible for Code Enforcement and Zoning. When the Chief looks at the Zoning Administrator, that person is to be the technical expert within the organization; offering zoning decisions. Those decisions are made by gathering the information after talking with the Town Planner, Building Inspector, personnel in Inspectional Services and looking at the history of the lot of land. If an applicant doesn't agree with that decision, that is how they wind up at the ZBA. It is the applicant's responsibility to bring their view point to the ZBA to ask for relief from the Zoning Ordinance. The Chief does not have any issues with the Zoning Administrator assisting an applicant, especially one that is representing themselves. However, it is the applicant's responsibility to fill out the application with the correct

information. The Chief made a note for himself: does the application need to be adjusted. That is something he will sit down with the Zoning Administrator and review.

Chairman Davis commented that the Zoning Administrator was representing the Town and that the Town documentation should be part of the package. The Chief did not disagree with Chairman Davis.

The Chief also stated that it might shock the Board to know that they still have boxes of microfiche from 2016 that needed to be gone through to do data review.

One of the duties the Chief has charged the Zoning Administrator with doing is to research the open cases of Code Enforcement and see which ones are so far out there that even with legal assistance they could not win. The Zoning Administrator is the gate keeper for all the code enforcement pieces.

Chairman Davis asked the Chief if those cases were reported to the Board of Selectman on the monthly report by Helen. She also stated that she does get that report and she hasn't seen 120 cases that were open for Code Enforcement. The Chief explained that it was a month to month report and not annual.

The Administrative Aide in the Fire Department has amazing detail and keeps all the files up-to-date. They now have that structural piece that was missing. At the end of the day, the Zoning Administrator is here to educate the violator as to why they violated something and to try to mediate the situation before the Chief has to spend the budget for legal.

Chairman Davis asked the Chief for a copy of the 12 month historical. The Chief affirmed the request.

The Chief stated that under the By-Laws of the ZBA, under Responsibilities, Section H, the Vice-Chair's responsibility is to maintain the files of the decisions rendered by the Board and review the decisions every 180 days. Then, at the end of the 180 days, make an appointment with the Zoning Administrator to review the follow-up.

Chairman Davis wanted to discuss Zoning determinations. If someone inquires of the Zoning Administrator if something is allowed, not allowed, whatever, and a zoning determination is made based on that and the Zoning Administrator informs the requestor that they will need to come before the ZBA for determination. 25 such request for zoning determinations have taken place in 2016. Four have come before the ZBA. There are 21 potential uses out there that may be active that the requestors are looking at to see what they have to do to make it conforming or an allowed use but they haven't come in before the ZBA as of yet. What is the current follow-up?

Chief Buxton responded that the Fire Department has a very active relationship between the Assessing Department, Planning Department and Inspectional Services.

Mr. Brackett commented that he was having a hard time believing that if 21 people do not come to the ZBA that the 21 will not be building in violation.

Selectmen Luszey remarked that they did not have the money or the resources to go and look at all the determinations that have been made. There are processes in place that should be catching situations in violation.

Chairman Davis interjected that there is a safety valve to check that; it is when they do the assessment and they go in and the property has changed from a single family to a two family. At that point the Assessor's

Office should notify the Zoning Administrator who in turn should be checking to see if the proper permits were pulled and if the use is allowed within that zone.

Selectmen Luszey stated that the Zoning Administrator would not check to see if the permits were pulled but would check to see if there was ever a determination for a variance if one was required. It is then up to the Town to see if they want to spend the resources to undo that.

Chairman Davis asked the Selectmen if the Town was prepared to do that. What is the posture of the Town?

Selectmen Luszey replied that he did not know what the posture of the Town was and needed to ask the Board.

Chairman Davis commented that the ZBA Board is very hard pressed when they have a property that has been on the books and was assessed and nothing was done when it changed over. What is the ZBA supposed to do when the applicant has paid taxes and the Town is aware of what has happened on that property and now the applicant is coming in to make things right. Whether they have complied with the stipulations or not, they don't know. That's what this Board is facing and it is not fair to ZBA to make an after the fact decision. The trigger is when the assessment is done and there has been a change on the property; something needs to happen within zoning.

Selectmen Luszey agreed with Chairman Davis and stated that he can only go forward from 12 months ago, not go back years.

Chief Buxton asked if he could review the Building Permit process. Building Permit applications will come in and the Zoning Department reviews about 85% of them. Even when you say someone is just coming in with a replacement deck. What they put down is just a replacement deck but when the inspector does the review of the plan and the deck goes from a 5 x 8 to a 20 x 40, Zoning has taken a look at that on the forward end to catch that piece of information. That piece of the puzzle is fluid in the office now.

Mr. Brackett commented that a yearly meeting between all parties present would be a good idea.

Chief Buxton stated that for the past 12 months they have had a Zoning Administrator that has been consistent. In his view, that position has an 18 month learning curve before you can feel comfortable. Chief Buxton believes it all comes down to communication. He is more than willing to meet every year if that is the will of the ZBA Board.

Chairman Davis would like to meet every 6 months as she believes that time frame is warranted.

Chief Buxton remarked that education of the applicant is key to the process.

Chairman Davis stated to Selectmen Luszey that if they saw blatant zoning violations, she felt that they should be able to raise those anonymously so that they are not tainted if it comes before the ZBA.

Selectmen Luszey remarked that they have an attorney's opinion that states that Board Members of the ZBA are on very thin ice because they do sit on the ZBA Board. If Members are submitting complaints and requests for hearings, they shouldn't be. There is a paper trail process that they need to follow from the Town. The Code Enforcement Complaint Form must be filled out.

Chairman Davis remarked that she lives in Hudson and has a vested interest in the Town as a tax payer. She is very concerned about the way the Town looks and again when she sees blatant violations she needs to say something; not as a ZBA Board Member but as a tax payer in Town. Nobody is happy about the tax base right now and if residents are paying for a particular function they should see some output from it.

Selectmen Luszey reiterated that if the proper channels are not being followed, then the Board is stuck.

Chief Buxton remarked that from a Code Enforcement stand point and the process of filling out the Code Enforcement Complaint Form and doing those type of things; every case that the Fire Department reviews either formally or informally is with the attorney. First question that is always asked is what did the complainant report? Chief Buxton believes in open transparency and does not have any issue with anyone asking any questions. If the problem escalates, then the proper paperwork needs to be filled out.

Chairman Davis remarked that it is part of the Zoning Administrator's responsibility to do a routine screening of the Town driving around.

Chief Buxton stated that they now have Sign Patrol – if they see a sign that is on the side of the road and doesn't belong there; they will pick it up and put it in the circular file. If they pick up an illegal sign, like a sandwich board sign, it does not go in the circular file. They will take the sign back to the owner and explain how they need to be in compliance. The Code Enforcement Complaint Form is on-line and is editable.

Chairman Davis commented that there are some blatant violations that are occurring all the time and then there are some that do not occur all the time but are really critical. Example was given of parking on Dracut Road and blocking the traffic lane – Chief Buxton and Selectmen Luszey both stated that was a phone call to the Police Department.

Chairman Davis wanted confirmation that any decision approved by the ZBA were being filed with the Registry of Deeds. Chief Buxton affirmed that was being done.

Mr. Brackett was concerned that applicant's that come before the ZBA without an attorney present have a good case but don't always prepare the paperwork correctly. He does understand that it is the applicant's responsibility to come prepared but asked if the Zoning Administrator could possibly assist the applicant.

Chief Buxton stated that once the applicant comes before the ZBA, they are already challenging a decision made by the Zoning Administrator. It is on the applicant's to come in and make the presentation to the ZBA. Chief Buxton does believe that the Zoning Administrator is very helpful to any applicant asking questions.

Selectmen Luszey stated that the ZBA Members need to keep themselves impartial as to what is going on with the case. Members cannot interject themselves into how that is being applied for.

Chairman Davis commented that no one wants to live next door to a property that is in code violation or drive through their town and see violations. She remarked on how Lowell and Haverhill have made remarkable come backs because they have strong Leadership; they have rebuilt properties and businesses and people want to move there. That is all the ZBA Members want; a community that looks nice, people aren't afraid and they can do what they want and live in a nice environment.

Chief Buxton would like to do a follow-up meeting in January with the full ZBA Board and then a 6 month review in June, 2017.

## **VI. REVIEW OF MINUTES**

October 27, 2016 meeting minutes were reviewed. Motion made by Mr. Martin to approve as amended and seconded by Ms. Shuman. All in favor. Vote: 5-0

## **VII. ADJOURNMENT**

Mr. Martin made a motion to adjourn and Mr. Pacocha seconded the motion. All in favor, the motion passed unanimously. Chairman Davis declared the meeting adjourned at 11:30 PM

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Maryellen Davis, Chairman